

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 20, 2013

Lyle W. Cayce
Clerk

No. 12-41075

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANCISCO LUGO-GUTIERREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:12-CR-539-1

Before HIGGINBOTHAM, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

Francisco Lugo-Gutierrez appeals the 60-month sentence imposed following his conviction of being present unlawfully in the United States following deportation. He argues that the district court erred by imposing a 16-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii) based on his prior conviction for indecency with a child by sexual contact under § 21.11(a)(1) of the Texas Penal Code. He concedes, however, that his arguments are foreclosed by our decision in *United States v. Rodriguez*, 711 F.3d 541, 562-63 (5th Cir. 2013)

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 12-41075

(en banc), *petition for cert. filed* (June 6, 2013) (No. 12-10695). Accordingly, the judgment of the district court is AFFIRMED.